

REMARKS**Status of the Claims**

Claims 1-42 are pending in the instant application. New claims 32-42 have been added. The new claims do not introduce prohibited new matter. Support for the new claims are summarized in the table.

Claims	Support
32	Page 19, Paragraph 0074, line 5
33	Claim 15
34	Claim 16
35	Page 19, Paragraph 0074, line 5
36	Claim 15
37	Claim 16
38	Page 19, Paragraph 0074, line 5
39	Claim 15
40	Claim 16
41	Page 19, Paragraph 0074, line 5
42	Page 19, Paragraph 0074, line 5

Response to the Restriction Requirement

In response to the Restriction Requirement in the Office Action, Applicants elect, with traverse, the invention of Group II, claims 1-9, 13-31, drawn to a method of diagnosing cancer comprising detecting survivin including using nucleic acid molecules and to kits for performing such method. New claims 32-42 are dependent from the elected claims, are drawn to a method of diagnosing cancer using nucleic acid molecules to detect survivin, and are directed to the elected invention. Therefore, Applicants respectfully submit that new claims 32-42 should be grouped and examined with the invention of Group II.

Applicants respectfully traverse the restriction of the claims. The inventions of Groups I and II are both directed to a method of diagnosing cancer in a patient. The method steps of both

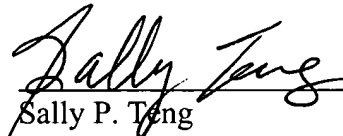
inventions involve detecting survival. It would not require undue burden to search and examine the claims of inventions I and II. Accordingly, the claims of Group I should be regrouped and examined with the claims of Group II.

Moreover, Applicants respectfully point out that at a minimum claims 1, 17, and 25-27 are linking claims linking the claims of Group I with those of Group II. MPEP 809.03 states that linking claims, if allowed, act to prevent restriction between inventions that can otherwise be shown to be divisible. Examples of linking claims include genus claims linking species claims (see MPEP 809.03). Applicants respectfully submit that once a linking claim is found to be allowable, the restriction requirement as to the linked invention must be withdrawn and any claims depending from or otherwise include all the limitations of the allowable linking claim must be examined (see MPEP 809.03).

If there are any additional fees due in connection with the filing of this response, please charge the fees to our Deposit Account No. 50-0310. If a fee is required for an extension of time under 37 C.F.R. § 1.136 not accounted for above, such an extension is requested and the fee should also be charged to our Deposit Account.

Respectfully submitted

Morgan, Lewis & Bockius LLP


Sally P. Teng
Registration No. 45,397

Dated: April 21, 2004
Morgan, Lewis & Bockius LLP
Customer No. 09629
1111 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
202-739-3000